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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

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March 2, 2012

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Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Re: T-03267A-11-0459 – Response to Verizon’s Objections to Proposed Tariff Revisions of McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services, Arizona Access Tariff No. 7 (filed Dec. 20, 2011)

On December 20, 2011 Windstream submitted tariff revisions for McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (“Windstream”)

These tariff revisions to our Arizona State Access Tariff are in response to the Federal Communications Commission (“FCC”) *Report and Order and Further Notice of Proposed Rulemaking* released on November 18, 2011.<sup>1</sup> Consistent with the FCC Order, our revised tariff language provides that Windstream will assess rates equal to interstate switched access rates on all toll VoIP-PSTN traffic that Windstream terminates. Verizon submitted a letter (dated January 30, 2012) in the above referenced dockets opposing several aspects of Windstream’s tariff filings and suggesting that they should be invalidated on the basis of Verizon’s contorted reading of the FCC Order. Verizon’s letters should not be given deference as Verizon’s interpretation of the FCC Order would produce fertile ground for new arbitrage opportunities.

**I. Verizon’s Allegation regarding “Improper Omission of IP-Terminating Traffic”**

Most significantly, Verizon suggests incorrectly that the FCC Order requires the application of rates not higher than interstate switched access rates to both originating and terminating VoIP-PSTN traffic.<sup>2</sup> With this request, Verizon seeks to require Windstream to modify its tariff to flash-cut Windstream’s originating intrastate access rates for certain intrastate PSTN-originated traffic on Windstream’s network. Verizon’s interpretation of the FCC Order relies on a misreading of a few isolated sentences extracted from the voluminous Order. Such a reading would be contrary to the FCC’s express intent clearly and consistently throughout the Order – to

<sup>1</sup> *In re: Connect America Fund, et al, Report & Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. Nov. 18, 2011) (*Report & Order and FNPRM*).

<sup>2</sup> Letter from Verizon to the Arizona Corporation Commission, dated Jan. 30, 2012.

avoid flash-cuts for price cap LECs<sup>3</sup> and “limit[] reform to terminating access charges at this time.”<sup>4</sup>

Contrary to Verizon’s assertions, the Order could not be clearer that the FCC is not requiring reductions in originating access rates at this time. The FCC expressly states that it is “limiting reform to terminating access charges at this time”<sup>5</sup>, and notes its intent to “further evaluate” other charges such as originating access at a later date.<sup>6</sup> The FCC even points out that it cannot take action on originating access at this time because there is an insufficient record to do so. Accordingly, in its Further Notice of Proposed Rulemaking (“FNPRM”), the FCC “seek[s] comment on that final transition for *all* originating access charges,”<sup>7</sup> which would necessarily include the access charges associated with calls that originate on the PSTN and terminate in VoIP. Additionally, the parts of the Order indicating that the FCC will continue intrastate originating access rates for the interim never note any exception for originating access rates for traffic terminated via VoIP.<sup>8</sup> Thus, the FCC has taken pains to establish, time and again, that it is not instituting reductions in originating access rates while it develops a record on appropriate transition and recovery mechanisms for these charges in the FNPRM.

The only portion of the Order’s VoIP-PSTN discussion that addresses originating access rates (which is the paragraph cited by Verizon to justify its opposition) is entirely consistent with the FCC’s general pronouncements regarding originating access. First, in indicating “toll VoIP-PSTN traffic will be subject to charges not more than originating and terminating interstate access rates,” the FCC reaffirms that, in the near-term, VOIP-PSTN traffic will be subject to two separate types of access rates, originating access rates and terminating interstate access rates; if that were not the case, the Order only would need to state that toll VoIP-PSTN traffic will be subject to charges not more than “interstate access rates,” with no delineation between charges for “originating” and “terminating interstate” access.<sup>9</sup> Second, the footnote accompanying this sentence expressly acknowledges that originating access rates for toll VoIP-PSTN traffic, like all other forms of traffic in the interim, are “subject to the phase-down and elimination of those charges pursuant to a transition to be specified in response to the FNPRM.”<sup>10</sup> Indeed, the most likely reason why the FCC Order includes a reference to originating access in the single

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<sup>3</sup> See *Report & Order and FNPRM* at ¶890 (finding that “a flash-cut for price LECs . . . is inconsistent with [the FCC’s] commitment to a gradual transition and could threaten [LECs’] ability to invest in extending broadband networks”); ¶870 (citing the FCC’s “commitment to a gradual transition with no flash cuts”).

<sup>4</sup> *Id.* at ¶739. See also *id.* at ¶777 (“Although we conclude that the originating access regime should be reformed, at this time we establish a transition to bill-and-keep only with respect to terminating access charge rates.”); ¶800 (“We believe that limiting reductions at this time to terminating access rates will help address the majority of arbitrage and manage the size of the access replacement mechanism.”); ¶818 (“Although we do not establish the transition for rate reductions to bill-and-keep in this Order, we seek comment in the FNPRM on the appropriate transition and recovery mechanism for ultimately phasing down originating access charges.”); ¶1301 (“[T]he comments do not provide sufficient basis for us to proceed [on originating access rate reductions] at this time. Thus, we seek further comment as to what, if any, recovery would be appropriate for originating access charges and how such recovery should be implemented.”).

<sup>5</sup> *Report and Order and FNPRM* at ¶739.

<sup>6</sup> *Id.* “[W]e address those elements in the FNPRM.” (that is, a Future Notice of Proposed Rulemaking).

<sup>7</sup> *Id.* at ¶1298 (emphasis added).

<sup>8</sup> *Id.* at ¶818. “[W]e take immediate action to cap all interstate originating access charges and intrastate originating access charges for price cap carriers. Although we *do not establish the transaction for rate reductions* to bill-and-keep in this Order, we *seek comment in the FNPRM on the appropriate transition and recovery mechanism for ultimately phasing down originating access charges* . . . A cap on interstate originating access represents a *first step* as part of our measured transition toward comprehensive reform . . .” (emphasis added).

<sup>9</sup> *Id.* at ¶961.

<sup>10</sup> *Id.* at ¶961, n. 1976

paragraph cited by Verizon is to reaffirm the agency's intent that tariffs in the near term will include *separate and distinct* originating and terminating access rates for VoIP-PSTN traffic (as is the case for other forms of traffic), but ultimately the FCC will synchronize originating and terminating rates as part of its overall reform regime. Verizon misses the key point that the FCC simply has not established the entire reform for both types of access yet. Thus, Verizon's attempt to force a flash-cut of originating access rates at this time is premature – it ignores the crucial fact that the FCC Order establishes currently only a framework for reducing terminating access, while turning to the FNPRM to address issues relating to reducing originating access. Verizon's alternate reading would render some of the FCC's text superfluous or contradictory with other portions of the Order.

Significantly, Verizon's contention here that the FCC Order requires that rates no higher than interstate switched access apply not only to terminating -- but also to originating -- VoIP-PSTN traffic is contrary to Verizon's recent advocacy at the FCC. Alongside other ABC Plan signatories, Verizon urged the FCC not to address originating access at this time.<sup>11</sup> In particular, the ABC Plan signatories, which included Verizon, recognized that reductions in originating access rates would require the FCC to "address rate rebalancing through potential end-user rate increases and additional recovery from the transitional access replacement mechanism" – and such measures "would threaten the USF budget at this time."<sup>12</sup> The ABC Plan signatories further observed that even where "the originating incumbent LEC's affiliate is offering the long distance service," "there are many circumstances in which a reduction in originating access charges would cause a net loss of revenues for the LEC and its long-distance affiliate."<sup>13</sup> Those concerns, which motivated Verizon to concur in the ABC Plan supporters' August 24 Joint Filing, are as relevant now as they were last year, and offer further reason for the Commission to oppose the new position Verizon is taking on this issue now.

Verizon also fails to grapple with other key inconsistencies with its proposed approach toward originating access and other portions of the FCC's Order. Specifically the FCC calls for measured transitions and avoidance of flash cuts,<sup>14</sup> but, unlike the case for terminating access rate reductions that are clearly required by the Order, the Order makes no recovery available for originating access rates. Verizon also fails to acknowledge that the ABC Plan's proposed approach toward VoIP-PSTN traffic (which the FCC indicates it adopted<sup>15</sup>) did not propose reductions in originating access rates. In sum, Verizon's interpretation of the Order is both incorrect and unsubstantiated.

Moreover, Verizon's expansion of the regime established in the FCC Order for terminating access would create new arbitrage opportunities on originating access, which is exactly the type of result the FCC intends to avoid.<sup>16</sup> Ironically, Verizon's claims about arbitrage ignore that the primary source of the existing arbitrage prevalent throughout the industry pertained to

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<sup>11</sup> Joint Comments of AT&T, Century Link, Fairpoint, Frontier, Verizon and Windstream, WC Docket 10-90 et. al., filed August 24, 2011 ("August 24 Joint Filing") at pp. 22, 26-27.

<sup>12</sup> *Id.* at 26-27.

<sup>13</sup> *Id.* at 27.

<sup>14</sup> *Report and Order and FNPRM* at. at ¶890

<sup>15</sup> *Id.* at ¶941.

<sup>16</sup> Verizon may suggest that its proposal for a flash-cut of originating access rates is needed to prevent carriers from enjoying what Verizon deems the benefit of paying lower interstate rates for purchasing originating access from Verizon who implemented the FCC's regime for all VoIP-PSTN traffic. If Verizon or any other carrier unilaterally decides to flash-cut its originating access rates ahead of the FCC's FNPRM and subsequent direction as to originating access, then that carrier bears the risks of such a business decision.

terminating access which is the reason the FCC tackles terminating rates first in its Order. Put more simply, the arbitrage that has proliferated terminating access rates exists because carriers originating calls know the jurisdiction of their traffic but have no clear way to identify how the calls terminate (*i.e.*, whether on the PSTN or in IP format). They rely on another carrier's percentage of VoIP traffic. Consequently, a regime like that now being proposed by Verizon, which recognizes a disparity in originating access rates between calls terminating on the PSTN and those terminating on an IP network, would incent dishonest carriers to specify a larger percentage of VoIP-terminated traffic than actually exists to avoid paying originating intrastate access rates. Thus, the next wave of industry-wide arbitrage ensues. The negative consequences of Verizon's proposal should not be discounted. Specifically, the FCC does not set a firm deadline for completing its FNPRM process regarding originating access rates. Verizon, nevertheless, would have carriers flash-cut originating access rates now prior to the FCC's implementation of any recovery mechanism. At the same time, Verizon's proposal would result in those carriers like Windstream enduring new arbitrage opportunities on originating access – and asymmetry in originating access rates for traffic originated on the same TDM facilities – in perpetuity until the FCC considers and decides the issue through its FNPRM and any subsequent orders.

In summary, the explicit provisions and full context of the FCC Order provide no support whatsoever for Verizon's contention that Windstream is required to flash-cut its originating intrastate switched access rates for traffic terminating in IP format. Accepting Verizon's assertion would serve merely to create the next wave of arbitrage opportunities for carriers looking to game the system, which is exactly the result the FCC intends to avoid. The FCC has issued an FNPRM and will now turn to the issue of originating access rates that, to date, have not been the focus of such wide-spread arbitrage opportunities. Verizon should not be allowed now to create such opportunities, and its opposition to Windstream's tariff should be rejected.

## **II. Verizon's Allegation regarding "Unfair Factor-Setting Terms"**

Verizon next opposes Windstream's tariff based on Verizon's erroneous representation that the factor verification process in the tariff is unreasonable and intended to delay implementation of the FCC's new regime. Nothing could be farther from the truth, and Verizon's comments on this point ignore the plain language in the tariff and current industry practices with other types of factors. The intent of the verification procedure in Windstream's tariff, very simply, is to have carriers like Verizon be responsible for supporting the VoIP factors they submit to Windstream.

Verizon's arguments on this point ignore the plain language in Windstream's tariff which sets forth a reasonable verification process which should be similar to other billing dispute processes used in the industry today. In short, carriers today typically are not allowed to wholly disrupt the billing process merely by submitting unverified, unsubstantiated information. Likewise, Windstream's tariff filing about which Verizon now complains sets forth an affirmative obligation by Windstream to apply verified factors and reasonably allows Windstream to request additional information in the event that it cannot verify the factors. Most significantly, the tariff filing expressly provides that Windstream will apply verified, timely-filed initial factors back to January 1, 2012. The verification process set forth in the tariff filing is reasonable on its face and merely serves to have carriers like Verizon substantiate the information they are providing for their traffic in order to avoid further instances of arbitrage.

The tariff filing reasonably establishes a process which seeks to have a submitting carrier verify its factors. Opposition to such a framework may be construed as an attempt by a submitting carrier to avoid any meaningful verification process of the VoIP factors it intends to submit to Windstream. Further, it is unreasonable to suggest that an unverified factor should become effective while any dispute over the factor may be pending. Not only is this unreasonable but again seems to exemplify an apparent desire to create new arbitrage opportunities. In short, under such an approach, all Verizon or any carrier would need to do is submit some number to Windstream – regardless of whether that number is supported by reasonable documentation – and all billing in the interim would need to be processed using that wholly unverified, unsubstantiated factor.

A carrier like Verizon submitting any billing factor bears the responsibility for reasonably supporting its factor, and billing should be changed only after a factor is verified. Otherwise, dishonest carriers would simply game the system by submitting unsubstantiated factors to continually disrupt the billing process.

### **III. Verizon's Allegation regarding "Impermissible Cap on Factor Values"**

Finally, Verizon opposes the tariff language pertaining to a default factor. Windstream's intent in establishing such a cap based on Paragraph 963 of the FCC Order stems from the fact that identification of VoIP traffic is exceedingly difficult. Given the prior problems Windstream has experienced with carriers attempting various VoIP arbitrage schemes, Windstream's tariff filing attempts to discourage dishonest carriers from trying to over-embellish their traffic factors. Windstream concedes, however, that this provision may not be as critical considering that the remaining portions of the tariff filing set forth a verification process that – if upheld and followed by submitting carriers – should serve to protect against these concerns. Thus, where the verification process is allowed to work effectively, then establishing a cap may not be a necessary component of the process.

Windstream states that its tariff filings should be approved. If you have any questions, please contact me at (501) 748-6856.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Cranford". The signature is fluid and cursive, with the first name "Chris" and last name "Cranford" clearly distinguishable.

Chris Cranford

cc: Steve Olea  
Lyn Farmer  
Janice Alward